

Commonwealth of Virginia

REQUEST FOR PROPOSAL

Issue Date: February 15, 2006

Issue Title: Preparation of Medicaid/Medicare Annual Cost Reports

Issuing Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) - P.O. Box 1797, Richmond, Virginia 23218-1797

Using Agency and Location Where Work Will Be Performed: DMHMRSAS - Statewide

Period of the Contract: July 1, 2006 through June 30, 2007.

Renewals: Contract may be renewed for five (5) additional periods of one (1) year duration upon mutual agreement between all parties and subject to availability of funding.

Proposals will be received for furnishing services described herein until:

Wednesday - March 22, 2006 - 3:00 PM EST

All inquiries for information shall be directed to:

Proposal Preparation and General Procedural Queries:	Dick Myers 804-786-6632 Or Mike Oprysko 804-786-6562
Copies of RFP:	

NOTE:

Vendors who expect to submit proposals in response to this solicitation are requested to return Form 1 – Intention to Respond via fax to 804-786-3827 no later than close of business on March 2, 2006.

To ensure that all questions receive responses, interested vendors are requested to submit questions via facsimile to 804-786-3827 using the enclosed Form 2—Fax Back Solicitation Questions to include e-mail address, voice and fax phone numbers by no later than 3:00 pm EST on March 9, 2006.

No other questions will be responded to after the March 9, 2006 deadline.

May be obtained at www.dmhmrsas.virginia.gov Click on link to Procurement/Solicitations and then click on link to Solicitations for the Office of Administrative Services and look for solicitation number assigned.

Proposal Delivery Information:

All Proposals shall be addressed: **DMHMRSAS, Office of Administrative Services**. If mailed, send to **P.O. Box 1797, Richmond, VA 23218-1797**; if hand delivered **Jefferson Building, 1st Floor - Room 108, 1220 Bank Street, Richmond, Virginia, 23219**. Envelopes should be marked with RFP number and opening date and time. It is the contractor's responsibility to assure that proposals are received and logged in by Procurement Operations staff at the location indicated by the date and time above, regardless of the method of delivery. LATE proposals will NOT be accepted under any circumstances. The above page and this signature page **must** accompany your proposal, with all information supplied and signatures applied as required.

IN COMPLIANCE WITH THE ABOVE REFERENCED REQUEST FOR PROPOSALS AND TO ALL THE CONDITIONS IMPOSED HEREIN, IN FACT OR BY REFERENCE, THE UNDERSIGNED OFFERS AND AGREES TO FURNISH THE SERVICES IN ACCORDANCE WITH THE ATTACHED SIGNED PROPOSAL OR AS MUTUALLY AGREED UPON BY SUBSEQUENT NEGOTIATION.

Offeror Name and Address:

Date: _____**By:** _____
(Official Signature in Ink)**Telephone:** _____**Printed Name:** _____**FEI/FIN Number:** _____**Title:** _____

The following information is requested, but it is not mandatory that it be supplied. Minority status does not influence the award: (Please Check all that apply)

<input type="checkbox"/>	Contractor DOES consider his/her firm to be a minority business.
<input type="checkbox"/>	Contractor does NOT consider his/her firm to be a minority business
<input type="checkbox"/>	Contractor IS certified as a minority business by VA Department of Minority Business Enterprise.
<input type="checkbox"/>	Contractor is NOT certified as minority business by VA Department of Minority Business Enterprise.
<input type="checkbox"/>	Contractor is a eVA registered vendor. (Learn about eVA at www.eva.state.va.us)
<input type="checkbox"/>	Contractor is NOT a eVA registered vendor.

No Fax Cover Sheet Is Required

FAX BACK: Your assistance is requested. Please fax back by no later than **March 2, 2006**.

TO: Office of Administrative Services - Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, Richmond, Virginia 23218

FAX TO: 804-786-3827

The organization below (check any that apply):

☐ Intends to prepare and submit a proposal to the above referenced solicitation.

Our contact person will be: _____

Contact voice phone number is: _____

Contact fax number is: _____

Contact e-mail address: _____

☐ Does NOT intend to respond to the above referenced solicitation.

☐ Other message: _____

Company Name: _____

Person Responding: _____

Voice Phone: _____ Fax: _____

FORM 2-- Fax Back Solicitation Questions

RFP#720C-04045-06D

No Fax Cover Sheet Is Required.

FAX BACK: Questions will be accepted through **March 9, 2006 – 3:00 PM EST**

TO: Office of Administrative Services - Virginia Department of Mental Health, Mental Retardation and
Substance Abuse Services - Richmond, Virginia 23218

FAX TO: 804-786-3827

Please record your question(s) regarding the above referenced solicitation:

Your Company:

Your Name:

Your Voice Phone:

Fax Phone:

1.0 Purpose

The purpose of this Request for Proposal (RFP) is to solicit offers from qualified individuals or organizations for licensing rights for a Centers for Medicare & Medicaid Services (CMS) approved software (Attachment B) to be used for preparation of the electronic submission of the annual Medicare/Medicaid Cost Reports (9 electronic submissions for 31 Providers) for the fiscal year ended June 30, 2006 and beyond.

The desired results of this contract are:

- Licensing rights for use of a CMS approved software for preparation of electronic submissions;
- Installation or continued maintenance of software at ten (10) locations;
- Appropriate and necessary training in use of software for staff at each location;
- Annual analytical reviews for Revenue Maximization;
- Technical assistance and updates to the software based on changes in regulations and reimbursement requirements; and
- Unlimited technical assistance from the awarded contractor.

1.1 **Information**

The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), hereinafter referred to as the Purchasing Agency, provides mental health, mental retardation and substance abuse care to Virginians through a system of state operated facilities.

The Purchasing Agency operates nine (9) adult mental health facilities, one (1) child and adolescent mental health facility, five (5) training centers for the mentally retarded and one (1) acute medical center that provides in-patient general medical, skilled and nursing care, with a combined total operating budget for FY 2006 of \$522,001,287.

Facilities administered by Purchasing Agency are public nominal charge providers that utilize an all-inclusive charge structure, and also, utilize "Method A" (Attachment "A") for cost apportionment.

- Twelve (12) facilities with a combined total of thirty-four (34) certified levels of care (Providers) participate in the Medicare and/or Medicaid Program and a current total of 3,345 certified beds consisting of Medical/Surgical (71), Skilled Nursing (171), Intensive Psychiatric Treatment (452), Chronic Disease (480), Intermediate Care Facility-General (351), and Intermediate Care Facility - Mental Retardation (1820).
- All Medicaid providers are cost settled on the Lower of Cost or Charges Basis of Reimbursement and consist of the following:

Number of Certified Providers

Medical/Surgical (Acute Hospital)	5
Skilled Nursing Facility	2
Intensive Psychiatric Treatment	3
Intermediate Care Facility (Nursing Facility)	3
Chronic Disease	2
Intermediate Care Facility - Mental Retardation	5

- The Medicare providers, effective July 1, 2006 are to be reimbursed as Prospective Payment System Providers and consist of the following:

Number of Certified Providers

Medical/Surgical (PPS)	5
Skilled Nursing Facility (PPS)	2
Intensive Psychiatric Treatment (TEFRA)	5
Chronic Disease (TEFRA)	2

The Purchasing Agency's Cost Accounting System was installed in the late 1960's primarily to meet Medicare and Medicaid financial reporting requirements. In 1984 the Purchasing Agency purchased a financial management software package, designed specifically and exclusively for the Purchasing Agency's Hewlett Packard 3000 Computer System, which included cost accounting and report writing capabilities. The Purchasing Agency also utilizes Windows 2000 and XP Professional Operating Systems.

For your information a schedule is enclosed, (Attachment C) which identifies the volume of Medicare and Medicaid utilization, applicable to Fiscal Year 2005, by each certified participating facility.

- 1.2 **Participation of Small Businesses and Businesses owned by Women and Minorities:** It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. Toward that end, the Commonwealth encourages contractors to provide for the participation of minority, women-owned and small businesses and businesses through partnerships, joint ventures, subcontracts, or other contractual opportunities. Please indicate in Attachment D to this proposal the type and amount of subcontracting you propose if awarded this contract. The quarterly reporting of such subcontracting, joint ventures, etc. shall be a requirement of any contract resulting from this solicitation. Therefore, the successful contractor(s) shall submit a "Contractor's Report on Subcontracting" to the Contracting Agency within fifteen days after the end of each quarter during the term of the resulting contract and any subsequent renewal. This report shall be submitted even if there has been no applicable subcontracting during the preceding calendar quarter.

2.0 Scope of Work - Mandatory Requirements

The Contractor(s) shall provide all labor, supplies, travel and transportation to accomplish the following mandatory requirements:

- 2.1 Coordinate the gathering of all expense, revenue and statistical data for the Medicare and Medicaid cost reports from the facilities and the Central Office. This should be accomplished utilizing Windows 2000 and/or XP Professional and compatible with future Microsoft Operating Systems upgrades to generate input discs (at the general ledger level of detail) that are facility specific.
- 2.2 Provide any necessary training of personnel, identified by the Purchasing Agency, in the use of a CMS approved Windows based software package for in-house preparation of cost reports at the ten (10) DMHMRSAS locations.

- 2.3 Analyze the preliminary reports for regulatory compliance to determine if the settlements encompass appropriate reimbursement maximization strategies.
- 2.4 Provide unlimited as requested on-site (Central Office) reviews with personnel in regard to:
 - 2.4.1 The preliminary settlement and to assist the Central Office with investigation of specific questions/issues about each facility's reports;
 - 2.4.2 Revisions to draft settlements based on the Central Office's internal review of data after the preliminary report has been received from the facilities;
 - 2.4.3 Revisions to settlements based on the Central Office's internal review of data after the original report has been submitted to the Intermediary;
 - 2.4.4 Revisions based on the findings of the Commonwealth's Auditor of Public Accounts; and
 - 2.4.5 Revisions based on the fiscal intermediary's pre-tentative adjustments.
- 2.5 Production of the final Medicare and Medicaid cost reports for submission to United Services, LLC (Medicare Intermediary) and the Department of Medical Assistance Services (Medicaid Intermediary) meeting deadline requirements established by the Purchasing Agency, and not necessarily the Program intermediary. The Contractor shall be required to provide an unlimited number of reruns, at no extra cost, until the report is finalized. Such reruns must be received by DMHMRSAS Central Office within twenty-four (24) hours of the provision of revised information. In addition, the contractor must be available at a later date for defending, consulting, and revising reports, should such reports be subject to a CMS audit, at no additional charge.
- 2.6 The Contractor shall be prepared to work on-site at as many facilities and Central Office as are considered necessary by the Purchasing Agency to complete this project. The Contractor will be responsible for working with staff of the Purchasing Agency in order to collect the necessary data, arrange travel, and provide for any additional support services.
- 2.7 The software package provided must be available and capable of being used to prepare "what if" models.
- 2.8 The Contractor shall provide off-site storage and backup copies of all filed reports.
- 3.0 Standards of Performance:**
- 3.1 Contractor shall comply with all regulations and requirements of CMS formerly, The Health Care Financial Administration (HCFA).

4.0 Qualifications of the Provider:

Only those providers whose firm has developed and/or is the proprietor of a CMS approved Electronic Cost Report (ECR) software system who have at a minimum five (5) or more years experience in conducting such services and who possess a qualified trained staff shall be considered. If not the developer, Offerors must submit a letter from the proprietor authorizing their use of the software.

Offerors shall exhibit strong fiscal responsibility and good accounting practices. Offerors shall be professional individuals or firms currently engaged in the practice of Health Care Financial Management and/or Reimbursement.

5.0 Proposal Preparation and Submission Requirements:

General Instructions:

5.1 **RFP Response:** In order to be considered for selection Offerors must submit a complete response to this RFP. **One (1) original and four (4) copies must be submitted to the DMHMRSAS.** No other distribution of the proposal shall be made by the Offeror.

5.2 **Proposal Preparation:** Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the Purchasing Agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be considered non-responsive and be rejected by the Purchasing Agency. Mandatory requirements are those required by law or are such that they cannot be waived and are not subject to negotiation.

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFP requirements. Information that the Offeror desires to present that does **not** fall within any of the requirements of the RFP should be inserted at an appropriate place or attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to locate where the RFP requirements are specifically addressed.

As used in this RFP, the terms "must", "shall", "should" and "may" identify criticality or requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the

suitability of the proposed solution. Items labeled as “should” or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual “must” and “shall” items may not be fully satisfied, but it is the intent to satisfy most, if not all, “must” and “shall” requirements. The inability of an Offeror to satisfy a “must” or “shall” requirement does not automatically remove that Offeror from consideration; however it may seriously affect the overall rating of the Offerors’ proposal.

Each original of the proposal should be bound in a single volume.

Ownership of all data, materials and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the Offeror must invoke the protections of § 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.

- 5.3 **Oral Presentation of Proposal:** Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Purchasing Agency. At the Offeror’s request these may be via telephone conference call. This will provide an opportunity for the Offeror to clarify or elaborate on the proposal but will in no way change the original proposal. Oral presentations are an option of the agency and may not be conducted.
- 5.4 **Specific Requirements of Proposal:** Proposals submitted in response to this RFP should be as concise as possible so that the DMHMRSAS evaluation team may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items, in clearly labeled, sections, as a complete proposal:
- 5.4.1 The return of this complete RFP and all addenda acknowledgments, if any, signed and filled out as required.
 - 5.4.2 A detailed narrative description of the services to be provided. Narrative should include a description of the proposed methodology in the preparation, analysis and production of cost reports (limited to three (3) pages).
 - 5.4.3 Resumes of key individuals who shall be assigned to manage and carry out the services to be provided under any contract awarded as a result of this RFP, to include all training received
 - 5.4.4 Detailed narrative regarding experience of Offeror to include; number of years experience individual/organization has as a developer and/or proprietor of a CMS approved Electronic

Cost Report (ECR) software system, other projects/contracts of this type, including duration or period covered and references with contact name, address and phone number.

5.4.5 Time frame proposal with detailed indication of responsible key individuals addressed in 5.4.3 above and resource commitment for each task.

5.4.6 A Detailed narrative of any support required or expectations of the Purchasing Agency, including use of facilities, equipment and staff.

5.4.7 A detailed financial payment proposal.

6.0 Evaluation and Award Criteria

6.1 Proposals shall be evaluated by the DMHMRSAS using the following criteria:

6.1.1 Documented proof of a CMS approved electronic software for submitting the CMS Form #2552-96 cost report applicable to fiscal year ending June 30, 2006. If approval has not been received, then proof that system has been submitted for approval.

6.1.2 Demonstrated experience of the Offeror in performing services as described in 5.4.4 above.

6.1.3 The Offeror's familiarity with healthcare issues and hospital cost reporting.

6.1.4 The extent of and degree of expertise of the Offeror's resource commitment.

6.1.5 Soundness of the Offeror's technical approach and workplan.

6.1.6 The Offeror's system of analysis reporting and requirements of the system on the Purchasing Agency.

6.1.7 Detailed financial and payment proposal.

6.2 **Award:** Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors above. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror(s) which, in its sole opinion, has made the best proposal, and shall award the contract to that Offeror. The agency may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. (*Code of Virginia* § 2.2-4395D) Should the DMHMRSAS determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the solicitation and the Contractor's proposal as negotiated.

7.0 General Terms and Conditions:

7.1 **Vendor's Manual:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendor's Manual* and any revisions thereto, which are hereby incorporated into this contract in their entirety, except as noted below. The procedure for filing contractual claims is in Section 7.19 of the

Vendors Manual. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under manuals. The appeals procedures set forth in the DMHMRSAS **Administrative Practices and Procedures Manual**; Chapter 5 **Contractual Services** are applicable to these contractual services. A copy of this Chapter is available for review in the offices of the DMHMRSAS.

- 7.2 **Applicable Law and Courts:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendor's Manual*. The contractor shall comply with applicable federal, state and local laws and regulations.
- 7.3 **Anti-Discrimination:** By submitting their proposals, Offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- 7.4 **Ethics in Public Contracting:** By submitting their proposals, all Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any

kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- 7.5 **Immigration Reform and Control Act of 1986:** By submitting their proposals, the Offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- 7.6 **Debarment Status:** By submitting their proposal, all Offerors certify that they are not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia.
- 7.7 **Antitrust:** By entering into a contract, the Offeror conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- 7.8 **Mandatory Use of State Form and Terms and Conditions:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- 7.9 **Clarification of Terms:** If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the contract officer whose name appears on the face of the solicitation, no later than five days before the due date. Any revisions to the solicitation will be made only by addendum issued by the contract officer.
- 7.10 **Payment:**
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).
2. To Subcontractors:
- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency, or other appropriate penalties may be assessed in lieu of withholding such payment.

- 7.11 **Precedence of Terms:** Paragraphs 7.1 through 7.10 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- 7.12 **Qualifications of Offeror:** The DMHMRSAS may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the work and the Offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Offeror's physical plant prior to award to satisfy questions regarding the Offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by or investigations of such Offeror fails to satisfy the Commonwealth that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated herein.
- 7.13 **Testing and Inspection:** The DMHMRSAS reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- 7.14 **Assignment of Contract:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- 7.15 **Changes to the Contract:** Changes can be made to the Contract in any one of the following ways:
1. The parties may agree in writing to modify the scope of the contract. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The DMHMRSAS may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to things such as scope of services to be provided, reporting requirements or cost of services. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the DMHMRSAS a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the DMHMRSAS's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the DMHMRSAS with all vouchers and records of expenses incurred and savings realized. The DMHMRSAS shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the DMHMRSAS within thirty (30) days from the date of receipt of the written order from the DMHMRSAS. If the parties fail to

agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia's *Vendor's Manual*. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the DMHMRSAS or with the performance of the contract generally.

- 7.16 **Default:** In case of failure to deliver good or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- 7.17 **Insurance:** By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*.

The Offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employers Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence single limit. Commercial General Liability is to include bodily injury, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional named insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 – per occurrence.
- 7.18 **Announcement of Award:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.state.va.us) for a minimum of 10 days. In addition, the purchasing agency will publicly post such notice on the DMHMRSAS Office of Administrative Service's bulletin board located on the 1st floor of the Jefferson Building – 1220 Bank Street, Richmond, Virginia 23219 for a minimum of 10 days.
- 7.19 **Drug Free Workplace:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful

manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

7.20 **Nondiscrimination of Contractors:** An Offeror shall not be discriminated against in the award of this contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

7.21 **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or Offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding.
- b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

8.0 **Special Terms:**

8.1 **Audit:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, or State auditors shall have full access to and the right to examine any of said materials during said period.

8.2 **Availability of Funds:** Is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

- 8.3 **Cancellation of Contract:** The DMHMRSAS reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver or perform on all outstanding orders issued prior to the effective date of cancellation.
- 8.4 **Method of Payment:** Any payments shall be made upon 30 days of receipt of accurate and complete invoice; all invoices **must** display the project number and contract number assigned to the resulting contract. Failure to include this information will result in return of invoices for correction. Advance payment requests will not be considered.
- 8.5 **Expansion of Target:** Throughout the original contract term and any subsequent renewal, along with the identification of available funding, the Contractor may be utilized, at the sole discretion of the DMHMRSAS, to provide similar services or continuing technical assistance and consultation services in the area addressed by this solicitation.
- 8.6 **Authorities:** Nothing in this agreement shall be construed as authority for either party to make commitments which will bind the other party beyond the Scope of Service contained herein. Furthermore, the Contractor shall not assign, sublet, or subcontract any work related to this agreement or any interest he/it may have herein, except as provided in this proposal, without the prior written consent of the DMHMRSAS.
- 8.7 **Prevailing Laws:** All services provided by Contractor pursuant to this agreement shall be performed to the satisfaction of the Agency, and in accord with all applicable federal, state and local law, ordinance, rules and regulations. Contractor shall not receive payment for work found by the Agency to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.
- 8.8 **Obligation of Offeror:** By submitting a proposal, the Offeror covenants and agrees that he has satisfied himself, from his own investigation of the conditions to be met, that he fully understands his obligation and that he will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
- 8.9 **Ownership of Intellectual Property:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
- 8.10 **Latest Software Version:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
- 8.11 **Limitation of Use:** The Commonwealth's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding

any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another Commonwealth site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the Commonwealth's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the Commonwealth, the contractor's sole remedy shall be to pursue a monetary claim in accordance with § 2.2-4363 of the *Code of Virginia*.

- 8.12 **Product Substitution:** During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without prior written consent of the contracting officer whose name(s) appears on the front of the solicitation, or their designee.
- 8.13 **Software Disposition:** Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty (30) days of termination of its license, except that the Commonwealth does reserve the right to retain one (1) copy of the software for archival purposes.
- 8.14 **Title to Software:** By submitting their proposal, the Offeror represents and warrants that it is the sole owner of the software, or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- 8.15 **eVA Business-To-Government Contracts:** The contract will result in one (1) eVA purchase order with the one percent (1%) transaction fee capped at \$500 per purchase order.

The eVA transaction fee will be assessed approximately thirty (30) days after the purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

- a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

8.16 **Renewal of Contract:** This contract may be renewed by the Purchasing Agency upon written agreement of both parties for five (5) additional periods of up to one year duration under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 30-90 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the "other services" category of the CPI-U section of the Consumer Price Index - of the United States Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available as of the date of renewal.
2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the "other services" category of the CPI-U section of the Consumer Price Index - of the United States Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available as of the date of renewal.

8.17 **Prime Contractor Responsibilities:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all sub-contractors that he may utilize, using his best skill and attention. Sub-contractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his sub-contractors and of persons employed by them as he is for the acts and omissions of his own employees.

8.18 **Subcontracts:** Except as stipulated herein, no portion of the work shall be subcontracted without prior written consent of the DMHMRSAS. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the DMHMRSAS the names, qualifications and experience of their proposed subcontractors and the Department reserves the right to reject any subcontractor proposed throughout the term of this agreement. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

8.19 **Identification of Proposal Envelope:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____

Name of Offeror	Due Date	Time
_____	_____	_____
Street or Box Number	/RFP No.	
_____	_____	
City, State, Zip Code	RFP Title	

Name of Contract/Purchase Officer or Buyer _____

The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid/proposal not contained in the special envelope is mailed, the bidder or Offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

- 8.20 **Confidentiality and Records:** The Contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this Agreement, and will not be divulged without the individual's and the Agency's written consent. Any information to be disclosed, except to the Agency, must be in summary, statistical, or other form which does not identify particular individuals.
- 8.21 **Contractual Disputes:** Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. Written notice of the Contractor's intention to file such claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. The contract may require submission of an invoice for final payment within a certain time after completion and acceptance of the work. Pendency of claims shall not delay payment amounts agreed due in the final payment.

The claim shall be filed with the Administrative Services Director setting forth the factual basis for the claim. The Administrative Services Director shall review the claim and notify the Contractor of the decision by certified mail within fifteen (15) days of receipt. The notification shall set forth the reasons for the decision and inform the Contractor that they may request a review of the decision by the Commissioner by filing such request within ten (10) days of receipt of the initial decision. The Commissioner may convene a panel to advise on a decision. The Commissioner shall render a final decision setting forth the reasons for the decisions within thirty (30) days of receipt of the request for review.

The Contractor may not institute legal action prior to receipt of the Commissioner's decision on the claim as provided in § 2.2-4364 of the *Code of Virginia*, unless the Commissioner fails to render the decision within thirty (30) days of receipt of the claim.

Failure of the Administrative Services Director or Commissioner to render a decision within the time frames specified shall not have the effect of affirming or denying the claim, but shall only permit the Contractor to proceed to the next step in the process. (§ 2.2-4363 of the *Code of Virginia*).

8.22 Compliance with Health Insurance Portability and Accountability Act of 1996 (HIPAA):

Except as otherwise limited, contractor may use or disclose protected health information (PHI) to perform functions, activities, or services for, or on behalf of, the DMHMRSAS, as specified in this RFP. In performance of any contract as a result of an award of this RFP, Contractor agrees to:

- Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this contract or as required by law;
- Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this contract;
- Report to the DMHMRSAS any use or disclosure of PHI not provided for by this Contract (Agreement) of which it becomes aware;
- Impose the same requirements and restrictions contained in this contract (amendment) on its subcontractors and agents to whom contractor provides PHI received from, or created or received by the contractor on behalf of the DMHMRSAS;
- Provide access to PHI contained in a Designated Record Set to the DMHMRSAS, in the time and manner designated by the DMHMRSAS, or at the request of the DMHMRSAS, to an individual in order to meet the requirements of 45 CFR 164.524.
- Make available PHI for amendment and incorporate any amendments to PHI in its records at the request of the DMHMRSAS;
- Document and provide to DMHMRSAS information relating to disclosures of PHI as required for the DMHMRSAS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528;
- Make its internal practices, books, and records relating to use and disclosure of PHI received from, or created or received by the contractor on behalf of the DMHMRSAS, available to the Secretary of the U.S. Department of Health and Human Services for the purposes of determining compliance with 45 CFR Parts 160 and 164, subparts A and E;
- Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of DMHMRSAS as required by the HIPAA Security Rule, 45 C.F.R. Parts 160, 162, and 164.
- Ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it.
- Report to DMHMRSAS any security incident of which it becomes aware.

- At termination of the contract, if feasible, return or destroy all PHI received from, or created or received by the Contractor on behalf of the DMHMRAS contractor still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

Contractor may use and disclose PHI received from the DMHMRAS, if necessary, to carry out its legal responsibilities and for the proper management and administration of its business. Contractor may disclose PHI for such purposes if the disclosure is required by law, or if contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially, that it will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and that the person will notify the contractor of any instances of which it is aware in which the confidentiality of the information has been breached.